REMARKS

In the Office Action dated December 16, 2004, the Examiner rejected claims 25-68 and 98 under 35 U.S.C. §§ 102 and/or 103 in view of Henkel, German Patent No. 2,624,690 ("Henkel"), Goldwell, German Patent No. 19,721,785 ("Goldwell") and/or Yoshihara, U.S. Patent No. 5,332,581 ("Yoshihara"). Applicant has carefully considered these positions of the Examiner and respectfully requests reconsideration based on the manifest differences between the present invention and the cited references.

In the December 16, 2004 Office Action, the Examiner noted "that the prior art rejections withdrawn in the Office action dated June 10, 2003 and reinstated in the Office action dated April 20, 2004 are due to the claims presented by the applicant. Specifically, the examiner only withdrew the art rejections in the Office action dated June 10, 2003 in response to applicant amending the claims to contain new matter. Furthermore, the examiner notes that upon amending the instant claims to remove the new matter, that the previous art rejections were reinstated." Applicant respectfully disagrees. Specifically, the amendment entered on January 26, 2004 in response to the Office Action dated December 10, 2003 neither removed nor introduced any new matter, but merely amended the language of Claim 25 to comply with a § 112 rejection. The amended claim expresses the claimed composition in terms of "% by weight" rather than "parts by weight". Both formats are supported by the specification (See, e.g., p. 29, lines 6-16); however the language was amended for clarity.

The Examiner previously stated that the "rejection of claims 25, 59 and 60 under 35 U.S.C. 102(b) as being anticipated by Henkel, DE 2,624,690, is withdrawn in view of applicant's amendments and remarks." Similarly, the Examiner withdrew his rejection of claims 26-42

under § 103 as being unpatentable over Henkel, his rejection of claims 25-47, 50-53, 55-68 and 98 under § 102 as being unpatentable over Goldwell, and his rejection of claims 48-49 under § 103 as being unpatentable over Goldwell in view of Yoshihara. These rejections were withdrawn in the June 10, 2004 Office Action due to an amendment to Claim 25 that more clearly defined the claimed composition in terms of component ratios. Amending the language to express the claimed composition components in terms of percentages did not in any way remove the limitation that was added to Claim 25 to overcome the Examiner's §§ 102 and 103 rejections in the June 10, 2004 Office Action. Accordingly, Applicant contends that the Examiner's rejection of Claims under 35 U.S.C §§ 102 and 103 should not have been reinstated and should presently be withdrawn.

Further, even if reinstated, the rejections should be withdrawn since the cited references do not teach the novel aspects of the present invention, either alone or in combination. Initially the Examiner reinstated his rejections of claims 25-47, 50-68 and 98 under 35 U.S.C. § 102 as being anticipated by Henkel and/or Goldwell. Applicant respectfully submits that the Examiner's continued reliance on Henkel and Goldwell is misplaced. It is black letter law that to be anticipatory, a prior art reference must disclose each and every element of the claim or claims at issue. Examination of the cited references clearly leads to the conclusion that Henkel and Goldwell both fall far short of this requirement.

As argued in previous Office Action Responses, Henkel teaches neither the component proportions nor the immediate application required by Claim 25. Rather, Henkel merely discloses the discovery that two particular direct blue dyes, brilliant blue R 28032 and lilac R 5283, are stable in bleaching compositions and are well absorbed by the hair. This narrow

disclosure still bears no resemblance to the present invention as claimed. Applicant recognizes that hair bleaching/highlighting compositions are inherently unstable. Applicant avoids this well-recognized problem by mixing the components at approximately the same time as they are used. This is an opposite approach to Henkel's search for stable dyes, and it allows users to color hair any desired shade. Conversely, Henkel is limited to platinum blond, and merely discloses a non-yellowing bleach rather than a true hair colorant like the present invention, which is capable of providing subtle variations in tonality and hue and subtle to pronounced variations in hair shade. Thus, claims 26-42, 59, and 60 are neither anticipated nor obvious in light of Henkel.

Further, Applicant maintains that Goldwell does not teach nor suggest a composition having the component percentages as claimed in the present invention, nor the principle improvement disclosed by the current invention. To the contrary, Goldwell teaches away from the present invention by relying on a combination of a xanthene-based hair dyeing agent, a peroxide based developer, and a persulfate based bleaching compound. The present invention, on the other hand, discloses that xanthene-based compositions are not suitable for use by the large number of individuals who have sensitive or treated hair.

Also, Goldwell discloses a composition which contains xanthene gum, thereby falling outside the scope of the current invention, which specifically excludes such compositions. Goldwell is virtually identical to Japanese Patent Publication No. 08175940 (cited in the current application on page 2), both disclosing a product containing a xanthene-based dyeing agent not suitable for use by those with sensitive or chemically treated hair. Thus, the pending claims cannot be anticipated by Goldwell, because Goldwell fails to teach or suggest a composition having the component percentages by weight. Specifically, the pending claims claim a

composition having 1-30% powder bleach mixed with 20%-60% aqueous developer and 20%-60% cationic dye hair colorant. Such a composition is important for chunking and streaking hair, particularly on sensitive or African-American hair. This is accomplished by carefully limiting the amount of persulfate. If the persulfate level is not minimized, the resulting composition is too caustic for use with fragile hair types. Goldwell's persulfate levels are approximately seven times higher than the levels called for in Applicant's invention. In short, the composition of Goldwell is very different from and wholly unsuited for use in applications the present invention is designed for. Therefore, Goldwell neither anticipates nor renders obvious the invention as claimed.

CONCLUSION

In view of the foregoing, applicant respectfully submits that the present invention represents a patentable contribution to the art and the application is in condition for allowance. Early and favorable action is accordingly solicited.

Respectfully submitted,

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